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23 UNITED STATES DISTRICT COURT

24 NORTHERN DISTRICT OF CALIFORNIA

25 SAN FRANCISCO DIVISION

26 SONOS, INC.,

27 Plaintiff and Counter-
28 Defendant,

29 vs.

30 GOOGLE LLC,

31 Defendant and Counter-
32 Claimant.

Case No. 3:20-cv-06754-WHA

Related to Case No. 3:21-cv-07559-WHA

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PORTIONS OF ITS TRIAL BRIEF**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Plaintiff Google LLC (“Google”) hereby requests to file under seal portions of its Trial Brief. Specifically, Google requests an order granting leave to file under seal the portion of the Trial Brief highlighted in green.

II. LEGAL STANDARD

Civil Local Rule 79-5(c) provides that a party seeking to file its own documents under seal must file an administrative motion that articulates the applicable legal standard and reasons for keeping a document under seal, includes evidentiary support from a declaration where necessary, and provides a proposed order that is narrowly tailored to seal only the sealable material.

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). In the Ninth Circuit, two different standards may apply to a request to seal a document – namely the “compelling reasons” standard or the “good cause” standard. *Blessing v. Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22, 2021) (citing *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016)). “To seal records in connection with a ‘dispositive’ motion or a motion that ‘more than tangentially relate[s] to the merits of a case,’ ‘compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure’ are required.” *Bronson v. Samsung Elecs. Am., Inc.*, No. C 18-02300 WHA, 2019 WL 7810811, at *1 (N.D. Cal. May 28, 2019) (quoting *Kamakana*, 447 F.3d at 1178-79). “A particularized showing of ‘good cause’ under Federal Rule of Civil Procedure 26(c), however, suffices to warrant sealing in connection with a non-dispositive motion.” *Id.*

This Court has analyzed sealing requests in connection with motions *in limine* pursuant to the “good cause” standard for non-dispositive motions, although the information Google is requesting to seal would satisfy either standard. *See, e.g., Gearsource Holdings, LLC v. Google LLC*, No. 18-CV-03812-HSG, 2021 WL 1123630, at *2 (N.D. Cal. Feb. 24, 2021) (“Because Defendant’s motion *in limine* is not a dispositive motion, the Court applies the lower good cause

standard.”); *Racies v. Quincy Bioscience, LLC*, No. 15-CV-00292-HSG, 2019 WL 8438448, at *1 (N.D. Cal. Dec. 16, 2019) (“Because the parties move to file documents related to their motions *in limine*, the Court will apply the lower good cause standard.”); *TVIIM, LLC v. McAfee, Inc.*, No. 13-CV-04545-HSG, 2015 WL 3776424, at *2 (N.D. Cal. June 16, 2015) (“Because motions *in limine* are non-dispositive motions, the Court applies the ‘good cause’ standard to the pending motions to seal.”).

III. THE COURT SHOULD SEAL GOOGLE’S CONFIDENTIAL INFORMATION

Material that is confidential and could harm a litigant’s competitive standing if disclosed may be sealed under the good cause standard. *See, e.g., Skillz Platform Inc. v. AviaGames Inc.*, No. 21-CV-02436-BLF, 2022 WL 875654, at *2 (N.D. Cal. Mar. 24, 2022) (finding “good cause to file the documents and portions of documents at issue under seal given the sensitive financial and business information they contain”); *Dugan v. Lloyds TSB Bank, PLC*, No. 12-CV-02549-WHA NJV, 2013 WL 1435223, at *2 (N.D. Cal. Apr. 9, 2013) (“There may be ‘good cause’ to seal records that are privileged, contain trade secrets, contain confidential research, development or commercial information, or if disclosure of the information might harm a litigant’s competitive standing.”).

The portion of the Trial Brief that is highlighted in green contain confidential information regarding Google’s highly sensitive usage data and metrics. Google has narrowly targeted its sealing request to this information. Public disclosure of this information would harm the Google’s competitive standing and create a risk of injury by providing competitors with access to information that Google does not have similar access to about their competitors, allowing them to gain a competitive advantage in the marketplace. Declaration of Nima Hefazi (“Hefazi Decl.”) ¶ 2. If such information were made public, Google’s competitive standing would be significantly harmed. *Id.* For example, the information Google seeks to seal relates to usage data and metrics that Google maintains confidentially and public disclosure of this information could provide competitors with information about the how often certain features are used by Google’s customers. *Id.* Google has therefore designated this usage data and metric information in this case as HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY under the protective order (Dkt. 92). Google thus has good cause to keep such information under seal. *See, e.g., Arista Networks, Inc. v. Cisco*

1 *Sys., Inc.*, No. 16-cv-00923-BLF, 2018 WL 2010622, *2-3 (N.D. Cal. Apr. 30, 2018) (sealing
2 “highly confidential” information relating to litigant’s “financial information and internal
3 development strategies”); *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, No. 12-CV-
4 03844-JST, 2015 WL 12976921, at *3 (N.D. Cal. Mar. 31, 2015) (granting motion to seal “sensitive
5 business information regarding the amount of royalties received under a licensing agreement and
6 also detailed information regarding a confidential licensing and manufacturing agreement” under
7 the good cause standard); *Rodman v. Safeway, Inc.*, No. 11-cv-03003-JST, 2014 WL 12787874, *2
8 (N.D. Cal. Aug. 22, 2014) (sealing “internal, nonpublic information discussing [a litigant’s] pricing
9 strategy, business decision making, and financial records”).

10 **IV. CONCLUSION**

11 For the foregoing reasons, Google respectfully requests that the Court grant Google’s
12 Administrative Motion to File Under Seal Portions of its Trial Brief.

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14 DATED: April 26, 2023

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CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on April 26, 2023, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: April 26, 2023

By: /s/ Nima Hefazi
Nima Hefazi